

CHU YIK MAN v. S. RAJAGOPAL & CO. & ANOR.

[O.C.J. (Chan Sek Keong J.C.) December 30, 1986]

[Singapore – Originating Summons No. 1323 of 1986]

Conveyancing – Legal requisition – Road widening below 10% of area – Whether satisfactory reply to requisition – Whether agreement for sale null and void – Claim for return of 10% deposit.

Land Law – Sale and purchase agreement – Legal requisition – Road widening below 10% – Whether agreement for sale null and void – Claim for return of 10% deposit.

In this case, the plaintiff entered into an agreement for sale dated September 3, 1986 to purchase from the second defendant the property known as 101 Siglap Road which is a two-storey bungalow erected on an area of 943.2 sq.m. at the price of \$600,000. The property was sold "subject to the satisfactory replies to the requisitions to the Local Authorities and the Provisional Mass Rapid Transit Authority being received by the purchaser ..."

On or about October 3, 1986, the plaintiff's solicitors received a duly answered legal requisition from the Development and Building Control Division to the effect that the property was not affected by (a) any approved road proposal or (b) any approved backlane proposal or (c) any approved drainage proposal or (d) any Government Gazette Notification. However, on October 11, 1986, the said solicitors received from the Roads Planning & Design Branch, Roads Division, Public Works Department, a road interpretation on which was noted that part of the property was "Land required for Road Widening" and that Siglap Road was a Category 4 Road, i.e. a major road of a required minimum width of 7.6m. It was not disputed that the area that might be affected by road widening was 94 sq.m. which was just below 10% of the area of the land. The affected land did not affect any part of the building which was sited far from the road and nearer to the rear boundary.

The plaintiff sought a declaration that the agreement for sale to be declared null and void and an order for the return of 10% deposit. He submitted that a loss of 10% of the land rendered the reply to the requisition unsatisfactory.

Held, allowing the plaintiff's application: (1) a requisition is merely an application to the competent authorities for certain information to be supplied. A request for a road interpretation plan whether or not made pursuant to the standard form of requisition is as much a requisition as Form DC9(DO)-5 and any reply from the competent authorities, whether contained in the said plan or by separate correspondence, is a reply to the requisition;

(2) the road widening would result in a diminution in the area of the property (and therefore its overall value) without any compensating increase in value in some other way as a result of the road widening;

(3) a difference of \$30,000 to \$50,000 in value is not

A negligible by any standards and a potential loss of about 1000 sq.ft., from about 10,000 sq.ft. is also not negligible, particularly in Singapore;

(4) in the circumstances, the plaintiff would not get what he had bargained for if the sale were forced on him and that the reply to the requisition was accordingly not satisfactory as contemplated by the agreement for sale dated September 3, 1986 made between the plaintiff and the second defendant. The said agreement was therefore null and void and the first defendants as solicitors for the second defendant must return the 10% deposit of \$60,000 to the plaintiff.

Cases referred to:

- C (1) *Tatlien Hardware Pte. Ltd. v. Tan & Lie & Anor.* [1982] 1 M.L.J. 9.
(2) *Teo Hong Choo v. Chin Kiang Industries Pte. Ltd.* [1983] 2 M.L.J. 309.
(3) *Peh Kwee Yong v. Sinar Co. (Pte.) Ltd.* [1984] 2 M.L.J. 260.

D ORIGINATING SUMMONS.

Choo Kwun Kiat for the plaintiff.

David Hew (S. Rajagopal with him) for the defendants.

Cur. Adv. Vult.

E Chan Sek Keong J.C.: This is another one of those cases on the vexed question of what is a satisfactory reply to a requisition in a contract for the sale and purchase of properties. Disputes of this nature have frequently come before the courts in the last few years and will continue to do so unless conveyancers in Singapore take some trouble to revise the drafting of this condition and make its meaning clearer or its intent more specific.

G In this case, the plaintiff entered into an agreement for sale dated September 3, 1986, to purchase from the 2nd defendant the property known as 101 Siglap Road, Singapore, which is a two-storey bungalow erected on Lot 454-96 of Mukim 26 which has an area of 943.2 square metres at the price of \$600,000. Special Condition C of the agreement reads as follows:

I "The property is sold subject to the satisfactory replies to the requisitions to the Local Authorities and the Provisional Mass Rapid Transit Authority being received by the Purchaser and ... No reply from the authorities to the Purchaser's legal requisitions shall be construed to be unsatisfactory if any notice under any Statutory Enactment affecting the said property and served prior to the date of completion of this Agreement is capable of being complied with."

On or about October 3, 1986, the plaintiff's solicitors received a duly answered legal requisition

(Form DC9 (DO)-5) from the Development and Building Control Division (DBCD) to the effect that the property was not affected by (a) any approved road proposal or (b) any approved backlane proposal or (c) any approved drainage proposal or (d) any Government Gazette Notification. However, on October 11, 1986, the said solicitors received from the Roads Planning & Design Branch, Roads Division, Public Works Department, a road interpretation plan on which was noted that part of the property was "Land required for Road Widening" and that the road concerned viz. Siglap Road was a Category 4 Road, i.e. a major road of a required minimum width of 7.6 metres. On the plan itself is a notation which reads as follows:

"The information given on the plan forms the best information available on October 3, 1986 and is liable to change without notice."

It is not in dispute that the area that is or might be affected by road widening is 94 sq.m. which is just below 10% of the area of the land. The affected land does not affect any part of the building which is sited far from the road and nearer to the rear boundary.

On these facts, the plaintiff has come to court for a declaration that the agreement for sale be declared null and void and for an order for the return of the 10% deposit. His counsel submitted that a loss of 10% of the land renders the reply to the requisition unsatisfactory. He referred to three High Court decisions in *Tatlien Hardware Pte Ltd v. Tan & Lie & Anor.*⁽¹⁾, *Teo Hong Choo v. Chin Kiang Industries Pte Ltd.*⁽²⁾, and *Peh Kwee Yong v. Sinar Co (Pte) Ltd.*⁽³⁾ in which similar issues relating to replies to requisitions were decided. He submitted that on the basis of these authorities and on the facts, the reply to the requisition in this case was unsatisfactory. Counsel for the defendants, on the other hand, submitted that the reply could not be regarded as unsatisfactory because (a) the answer in the relevant requisition stated that there was no approved road proposal affecting the property and that the road interpretation plan and the notation thereon are not requisitions or replies to requisitions; (b) alternatively, if there were a road widening scheme, there was no evidence that it would be implemented in the foreseeable future; and (c) the area affected would be less than 10% of the total area and that the road widening would, if carried out, enhance the value of the property in giving a wider road frontage to the land.

A I do not agree with counsel for the defendants that the road interpretation plan and the notes thereon do not constitute a reply to a requisition. A requisition is merely an application made to the competent authorities for certain information to be supplied. For convenience, the form of the requisition has been standardised by each of the relevant authorities. A request for a road interpretation plan whether or not made pursuant to the standard form of requisition is as much a requisition as Form DC9 (DO)-5 and any reply from the competent authorities, whether contained in the said plan or by separate correspondence, is a reply to a requisition. This point, although not argued, was assumed in the three reported cases referred to earlier. In my view, this is an unarguable point.

D I also do not agree with the submission that a wider road frontage in the present case enhances the value of the property. The road interpretation plan shows that the road widening will merely result in the property having a straighter frontage and not a wider frontage. In my opinion, the road widening will result in a diminution in the area of the property (and therefore its overall value) without any compensating increase in value in some other way as a result of the road widening.

F I turn now to a consideration of these authorities. In *Tatlien's* case, the properties were as zoned for local shopping and were purchased on the condition of such zoning. The reply to the requisition (Form DC9(DO)) stated that the properties were not affected by any approved road, backlane or drainage proposal but that they were affected by a rear service road. The purchaser then applied for and obtained a road interpretation plan which showed that the properties could be affected by road widening. Subsequently, the Development Control Division in a letter dated May 6, 1980 explained the effect of the road interpretation plan in these terms:

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- "(i) According to the Master Plan reading, the site is not affected by a road widening line. However, it is affected by a rear service road as the properties abut this rear service road.
 - (ii) The portion marked green on your Interpretation Plan is the existing back lane which is the Master Plan's intention to convert it into a rear service road.
 - I
 - (iii) Your copy of Interpretation Plan showing the road widening line is inserted by the Roads Branch in accordance with the current standard and will be applicable if and when the lot comes for redevelopment.

- (iv) However, under this Plan the site is not affected by the said rear service road."

The relevant fact in *Tatlien's* case was that the road widening line would apply only if a redevelopment of the properties were to take place. As a matter of law, this fact had no relevance to the purchaser because he had not purchased the properties for redevelopment. No such term could be implied or that if the properties would be developed, there would be no scheme affecting their redevelopment. For these reasons, the learned Chief Justice held that the reply was satisfactory. The question in *Tatlien's* case was therefore one of law rather than of fact.

In *Teo Hong Choo's* case, the property concerned was situated in Upper Serangoon Road. The reply to the requisition (Form DC9 (DO)-5) was that the property was not affected by any approved road, backlane or drainage proposal and that a proposal to add to and alter the property was refused in 1961 on the ground that the sale was affected by road improvement. The road interpretation plan obtained by the purchaser showed that the road widening line affected his property to the extent of about one third of the total area of the property and that it ran through the building standing on the property. A letter dated March 23, 1980 from the Public Works Department explained as follows:

"Please note that the road widening lines indicated on the Interpretation Plan is applicable when the site comes up for redevelopment or when the widening of Upper Serangoon Road takes effect."

Counsel for the purchaser called in aid the decision in *Tatlien's* case but Dr. A.P. Rajah J. distinguished it on the basis that in *Tatlien's* case, the road line did not form part of the Master Plan but was inserted by the Road Section of DBCD on their own initiative and that in effect, the properties were not affected by the road widening line or the back lane (which was to be converted into a rear service road). The learned Judge then went on to hold that in the case before him the position was very different in that one third of the property was affected by a road widening line under the Master Plan and that on these facts, the answer to the requisition was unsatisfactory.

In the last reported decision in the series *i.e.* *Peh Kwee Yong's* case, the plaintiff agreed to purchase the property which had an area of 12,900 square feet zoned for residential use at the price of \$1,860,000 or \$144.18 per square foot. The relevant road interpretation plan showed that the pro-

- A perty was affected by road widening and when implemented, would reduce the area by about 329 square feet. The condition in question provided that the property was "sold subject to your solicitors receiving satisfactory answers to all requisitions ... and in the event of any of the answers to such requisitions being found unsatisfactory to you or your solicitors," the purchaser was at liberty to annul the sale. Lai Kew Chai J. held that notwithstanding the subjective form of the clause an objective test of what is satisfactory must be applied. He applied the test of a reasonably determined purchaser and that whether a particular answer was satisfactory to such a purchaser was a question of fact. On this test, the learned Judge held that an area of 329 square feet (forming 2.55% of the total area of \$47,435.22 in monetary terms) was so inconsequential that no reasonably determined purchaser could regard it as giving him the right to annul the sale and purchase.

- E In my view, the common thread that runs through these three decisions was the intention of the parties as expressed in the formula "satisfactory reply to requisitions." In my view, that formula is intended to give the purchaser substantially what he has bargained for, taking into account his purpose in purchasing the property and such other circumstances which have a direct or indirect effect on the fulfilments of that purpose. So, in *Tatlien's* case, as the purchaser bought the properties for their existing use and not for redevelopment, he could not complain about a road widening scheme which would or might come into existence upon a redevelopment taking place. In *Teo Hong Choo's* case, where the road widening scheme could be implemented at any time, it was not the intention of the purchaser to purchase two thirds of a property and a part of the building for the price of the whole. The effect of the road widening line when implemented was so substantial that he could not be said to have got what he had agreed to buy and what the vendor had agreed to sell to him at the price agreed. In *Peh Kwee Yong's* case, the amount of land to be taken away for road widening was, in the words of Lai Kew Chai J., "so inconsequential" that the purchaser would get substantially what he has agreed to purchase.

- I In the case before me, the road interpretation plan contains a note that the property (having an area of 94 square metres and coloured red therein) is "Land required for Road Widening." The property is situated along that portion of Siglap Road, which is subject to road widening. There is no condition attached to the road widening as in

Tatlien's case. Although the road interpretation plan contains another note stating that "the information is liable to change without notice" suggesting the possibility that the road widening might not take place at all, I am only concerned with the existing state of affairs and not what it may be in the future. The area affected is 94 square metres out of a total area of 943.2 square metres, *i.e.* just under 10%. Will a reasonably determined purchaser consider this difference in the land area inconsequential? The decisions in *Teo Hong Choo's* case and *Peh Kwee Yong's* case fall on each side of the dividing line of reasonableness, 33% of the land (and part of the building) in one case and 2.55% of the land in the other. Those were clear cases. However tempting it is for me to draw a dividing line between what is satisfactory and what is not in terms of the quantity of land so affected, I shall refrain from so doing because I do not think that this line can be precise. The diminution in the land area cannot be the sole determining factor in most cases. Whether or not a reply to a requisition is satisfactory in respect of the sale or purchase of property in Singapore depends on many other factors. A purchaser may be buying a property for development or redevelopment or for its existing use. The development or redevelopment may or may not result in an intentional change of use. An existing use may be commercial, industrial or residential. The property involved may be large so that even if 10% were taken away, the balance would still be large enough to enable the purchaser to obtain substantially what he bargained for, as for example, it is a common requirement for new developments to be set back away from the main road for future road widening. Similarly, the property involved may be small in area so that even if 10% were taken away, the balance would render the property commercially unviable for a redevelopment intended by the purchaser. The consideration for the property may be based on a per square foot basis or for the whole property. The property may have a building on it which may or may not be affected by any road widening or other proposal. A property zoned for shopping may be affected by a proposal to divert the traffic flow. Any road or other proposal affecting a property may be implemented in the near future or at a future date which cannot affect the purpose of the purchase. The factors that affect a property in terms of its size, use, the purpose of the purchase and therefore its value so as to render it unsatisfactory to a purchaser are too many to be enumerated.

The present case concerns a two-storey bungalow which the purchaser has agreed to purchase for

A its existing residential use. To a Singaporean looking for a home in Singapore, a house is, without exception, the most cherished possession he is likely to buy and to hold in his lifetime. Land is an expensive commodity in Singapore. Subjectively, he buys residential property of 10,000 square feet with a building thereon, he expects to obtain 10,000 square feet of land and a building thereon because this is what he agreed to pay for. This is not normally true of the seller as he would otherwise not be selling the house. Therefore the perception of a purchaser as to what is a satisfactory reply to a requisition is likely to be very different from that of a vendor. If conveyancers continue to use what is evidently a standard but imprecise and unsatisfactory formula for all agreements for the sale and purchase of property in Singapore, and make no effort to define as clearly as possible the types of public works proposals and the permissible limits of such proposals as they affect the subject matter of the sale, the court will have to consider all the relevant factors and applying an objective standard as to what is reasonable in the circumstances of each case. In the present case, the agreed price of \$600,000 is for 943.2 square metres of land with a double storey bungalow erected thereon. The bungalow is not affected by the road widening as it is set back far from the road. For the same reason, it would appear that the plaintiff would not lose any amenity or enjoyment of the property. Therefore, the only ground on which the plaintiff has relied on to annul the sale is the loss of 10% of the land. I have no evidence as to the value attributable to the house itself but the land itself should have a value of between \$30 to \$50 per square foot for bungalow land in the Siglap area. In my view, a difference of \$30,000 to \$50,000 in value is not negligible by any standards and a potential loss of about 1,000 square feet, from about 10,000 square feet is also not negligible, particularly in Singapore.

H In the circumstances, I hold that the plaintiff would not get what he has bargained for if the sale were forced on him and that the reply to the requisition was accordingly not satisfactory as contemplated by the agreement for sale dated September 3, 1986 made between the plaintiff and the second defendant. Accordingly, I declare it null and void and order the first defendants as solicitors for the second defendant to return the 10% deposit of \$60,000 to the plaintiff.

Order accordingly

Solicitors: Choo & Yap; S. Rajagopal & Co